IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

Crl.Rev.Pet.No. 3998 of 2007()

CRMP.1370/2007 of CHIEF JUDL.MAGISTRATE, ERNAKULAM
CC.85/04 OF CJM, ERNAKULAM

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REVN. PETITIONER: 5TH ACCUSED

HARVINDER SINGH SETI, PROPRIETOR,
M/S PREETI ROADLINES, NO.170,
POPATHLAL CHAMBERS, DANA BUNDER, MUMBAI.

BY ADV. SMT.RASHMI K.V.

RESPONDENTS: COMPLAINANT AND STATE

THE CENTRAL BUREAU OF INVESTIGATION(SPE)
ERNAKULAM, REP. BY THE SPECIAL PROSECUTOR,
ERNAKULAM.

BY ADV. SRI.S.SREEKUMAR, SC FOR CBI

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 13/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3998 OF 2007

Dated this the 13th day of November, 2007

O R D E R

The revision petitioner, who is the 5th accused in C.C.No.85/2004 pending before the CJM, Ernakulam for an offence punishable under section 120B read with section 420 and 471 IPC, filed Crl.M.P.1370/07 under section 306 Cr.P.C. requesting the Magistrate to tender pardon to the revision petitioner who volunteered to figure as an approver. The said application was objected to by the CBI mainly on the ground that the revision petitioner had not come out with a full disclosure about the conspiracy hatched and also about the issuance of the fake lorry receipts pursuant to the said conspiracy. The court below as per Annexure-4 order dated 17.9.07 dismissed the petition holding that there is absolutely no material to show that the petitioner is ready and willing to make a full and true disclosure of the whole circumstances relating to the offences.

2. In his attempt to sustain the above order, Sri.S.Sreekumar, the standing counsel for the CBI, submitted that the petitioner had not made a full disclosure of the facts and

circumstances of the case within his knowledge as contemplated by section 306 Cr.P.C. and, therefore, the application was rightly dismissed by the CJM.

3. The reasons given by the court below in support of the dismissal of the application are not legally sustainable. Eventhough a reading of section 306 Cr.P.C. would indicate that tendering of pardon to an accomplice is an act of the court and the Code does not envisage the accused being sponsored either by the prosecution or by the accused himself to be declared an approver, ordinarily it is the prosecution who sponsors an accused to be treated as an approver because it is the prosecution who will stand benefited by the approver's evidence which in the normal course the prosecution cannot expect to unravel. In the absence of any indication in the section, there is nothing wrong in the accused himself volunteering to act as an approver. The question as to whether such a person makes a full and true disclosure of the whole circumstances within his knowledge in relation to the offence will have to be considered only after the court or the Magistrate tenders conditional pardon to such accomplice. Strictly speaking that stage is yet to reach. The procedure in this regard

has been laid down by a Full Bench of this court in ***Asokan Vs. State of Kerala*** [2005 (3) KLT 770]. However, to show his bona fides the petitioner could have disclosed the true and complete facts and circumstances touching on the criminal conspiracy allegedly hatched between the accused for the perpetration of the crime. Hence, although I am not interfering with the impugned order, I make it clear that if the petitioner files a proper petition, the same shall be considered and disposed of by the court below in accordance with law.

This Crl.R.P. is disposed of as above.

(V. RAMKUMAR, JUDGE)

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